

# SHAW KELLER LLP

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**BY CM/ECF & HAND-DELIVERY**

The Honorable Chief Judge Gregory M. Sleet  
J. Caleb Boggs Federal Building  
844 N. King Street  
Wilmington, DE 19801

Re: *Edwards Lifesciences AG, et al. v. CoreValve Inc., et al.*, C.A. No. 08-091-GMS

Dear Chief Judge Sleet:

CoreValve writes regarding Edwards' Statement Regarding Accounting of Money Damages for Infringing Units Sold February 8, 2011-May 1, 2012, filed on April 24, 2013 (D.I. 463). By this letter, CoreValve respectfully requests that it file its objections to that accounting by May 10, 2013.

On March 4, the parties submitted a joint letter to the Court proposing that the accounting for the above-referenced time period be submitted jointly. Edwards proposed submitting the joint accounting on April 1, 2013, and CoreValve proposed filing the submission on April 24, 2013 (D.I. 450).

As explained in CoreValve's March 15 letter to the Court (D.I. 453), CoreValve only recently learned that Edwards' claims to lost profits may be in dispute because the named plaintiffs may not be entitled to recover all of the lost profits requested in Edwards' proposed order.<sup>1</sup> On March 12, CoreValve raised this issue with Edwards and asked that Edwards substantiate that the named plaintiffs in this case are entitled to recover all of the claimed lost profits. Edwards refused, and continues to refuse, to provide any requested material.

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<sup>1</sup> As also explained in our March 15 letter, CoreValve learned of documents produced in the action between the parties concerning the Cribier patents (C.A. No. 12-023-GMS) (but not believed to have been produced in this case) that Edwards sells its Sapien devices through numerous distributorship agreements with Edwards affiliates or subsidiaries around the world. This sales structure, and those agreements, call into question whether the two Edwards entities who are named plaintiffs in this action have standing to recover all the claimed lost profits. See generally *Mars, Inc. v. Coin Acceptors, Inc.*, 527 F.3d 1359 (Fed. Cir. 2008).

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Edwards did not submit its accounting on April 1, nor did it provide any draft or proposed accounting until April 10, 2013. Although Edwards took over 5 weeks after the parties' March 4 letter to the Court to prepare this accounting, Edwards insisted for the first time that it would file the accounting on April 24. CoreValve asked Edwards to agree to a schedule that would allow CoreValve a reasonable amount of time to review the accounting and prepare its objections so the parties could file a joint submission, but Edwards refused to agree and then filed its unilateral accounting on April 24.

CoreValve respectfully requests that the Court permit it to file its objections to Edwards' April 24 accounting by May 10, 2013, 30 days after CoreValve first received the accounting documents from Edwards.<sup>2</sup> CoreValve believes this amount of time is reasonable in light of the fact that Edwards took over 5 weeks to provide its accounting. Because Edwards has not provided CoreValve with the information necessary to formulate all of its objections, CoreValve will make those objections using the best information available to it.

Edwards has indicated that it will file a response to this letter at a later time.

Respectfully submitted,

*/s/ Karen E. Keller*

Karen E. Keller (No. 4489)

cc: Clerk of the Court (via CM/ECF)  
Counsel of Record (via email)

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<sup>2</sup> This request assumes that the accounting documents Edwards sent to CoreValve on April 10 are identical to those Edwards filed with the Court on April 24. Edwards has represented that they are.